

Congress of the United States
House of Representatives
Washington, DC 20515-4606

November 23, 2020

The Honorable Peter DeFazio
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
2167 Rayburn House Office Building
Washington, DC 20515

Dear Chairman DeFazio,

I write to you regarding the continuity of our efforts to address federal fund swaps and their impacts on local economies. In Iowa, I saw the negative impact of this practice firsthand and through your partnership, investigating federal fund swaps and their effects became an important part of my tenure in Congress. There is much more work to be done though, especially given the recently released report (GAO-21-88) by the Government Accountability Office (GAO). I hope that you will consider the following as the House Transportation & Infrastructure Committee continues its work in the 117th Congress.

As you know, Federal fund swapping involves a State Department of Transportation (DOTs) giving local agencies and governments the option to exchange or “swap” their allocation of Federal-aid highway funds for State dollars. This allows States to pool Federal funding for statewide projects and use State dollars – which may not have similar provisions like Federal Davis-Bacon Act, Buy America, or utilizing Disadvantaged Business Enterprises requirements – for local projects.

In our joint request to the GAO in July 2019, we asked the watchdog agency to examine the practice of fund swapping to understand which states utilize a swap program and to what extent, as well as the impact these programs have on worker’s wages, the utilization of high-quality American materials, and the number of projects bound to Federal requirements. The GAO’s report does a good job of identifying states with programs and the utilization rate. In the past 5 years, 15 states have operated a swap program. The GAO identified that while most states only swap a small portion of their federal-aid funds, Iowa swapped about 18% (\$97 million) of its federal dollars in 2019. This 50% greater than the next closest state.

The GAO encountered trouble in calculating the impact that fund swap programs have on local economies. As the report says, “The impact of fund swapping on wages and other federal requirements cannot be definitively determined because, among other reasons, state DOTs generally do not track data needed to measure these impacts.” This lack of data tracking and reporting by State DOTs is concerning. Some states have elected to pursue swap programs without understanding the impact they have on workers, families, and local economies. This is especially concerning in Iowa, which, as noted, swaps more funding than any other state, and does not have prevailing wage or domestic content statutes that are similar to federal requirements. While some officials may justify swap programs as saving money, it

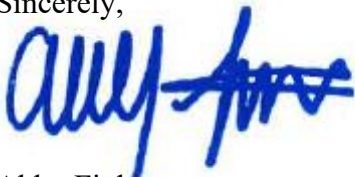
may just be by taking money from hard working families and communities. Clearly, not enough is known about the consequences of this practice and there are not any evidence-based justifications for its use.

For states that operate these programs, there must be a way to track and assess economic outcomes and consequences beyond anecdotes, which in the case of this study is instructive in showing more information and reporting is needed. While H.R. 2 – the Moving Forward Act – made tremendous strides in transparency and reporting on infrastructure projects, this report outlines the need for further reporting from states operating fund swap programs. States utilizing swap programs should have to report the hourly wages, location, and materials used for federally funded projects and those projects funded through the State-run swap program. This information would provide insight into the true impact of swap programs on workers and on using project materials not produced in American. Additionally, I encourage the U.S. Department of Transportation to exercise its oversight and administrative authority and consider a rulemaking for swap programs to improve transparency and ensure that States are not using this accounting gimmick to dodge Federal standards.

Another aspect of the report of interest is the hesitation of some state and local officials in having local agencies administer projects using federal funds, due to difficulty or unfamiliarity with federal regulations and the risk noncompliance with reporting requirements. As you consider a new surface transportation reauthorization bill, it would be valuable to include language authorizing a training program for local officials that will be administering federal transportation dollars. This program would help project administrators familiarize themselves with reporting requirements, regulations, and systems. It reduces the risk that local agencies will not comply with federal requirements and reduces the burden on State DOT officials providing oversight of projects.

In your work with the incoming Administration and the Senate on a long-term surface transportation reauthorization and infrastructure investments more broadly, I hope that you will consider these recommendations. Understanding and addressing the harmful effects of federal fund swap programs must be a part of future negotiations. Thank you again for previous work on the fund swap programs and for your commitment to protecting prevailing wage and domestic content regulations. I promise to keep fighting for hard working families and protect American jobs.

Sincerely,



Abby Finkenauer
Member of Congress

CC:
The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, U.S. Capitol Building
Washington, DC 20515